

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Jack D. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Z.B.,

Defendant and Appellant.

D062655

(Super. Ct. No. EJ3154C/D)

APPEAL from judgments of the Superior Court of San Diego County, Robert J. Trentacosta, Judge. Affirmed.

Z.B. appeals from judgments of the superior court making true findings on the Welfare and Institutions Code¹ section 300, subdivision (b), petitions filed on behalf of her 8-year-old son, Jack D., and 3-year-old daughter, Jamie S., removing the children from her custody and denying her reunification services. She contends that there was

¹ All further statutory references are to this code.

insufficient evidence to support the juvenile court's jurisdictional and dispositional findings and its denial of reunification services to her. We affirm the judgments.

FACTUAL AND PROCEDURAL BACKGROUND

Z.B. has a history of alcohol and drug abuse that started when she was young. In 1993, when she was 19, Z.B. pled guilty to driving under the influence and was ordered to participate in Alcoholics Anonymous. In 2003, she was arrested for possession of a controlled substance and drug paraphernalia and ordered to participate in a drug treatment program.

As a result of Z.B.'s continued alcohol and substance abuse as an adult, she was often unable to care for her three oldest children (Jack and his older sisters, Savannah and Julia), who spent substantial time living with Z.B.'s relatives. (*In re Savannah D.* (D061908, Sept. 27, 2012) [nonpub. opn.], p. 2.)² In addition, numerous dependency referrals were made on behalf of these children beginning in 2000; one for general neglect in 2000 relating to Savannah and one in 2003 relating to Savannah and Julia were substantiated. Z.B. was also arrested in 2003 for driving under the influence; Savannah and Julia were released to the custody of Z.B.'s mother, but no dependency proceedings were initiated at that time.

In October 2009, the San Diego Human Health Services Agency (the Agency) received a report that Z.B. had repeatedly failed to pick up Jack after school, that

² We take judicial notice of this unpublished opinion on Z.B.'s earlier appeal challenging the superior court's termination of her parental rights as to Savannah and Julia, as well as a prior petition for extraordinary relief filed by her relating to Jamie. (*Z.B. v. Sup. Ct.* (D060624, Jan. 5, 2012) [nonpub. opn.].)

Savannah, Julia and Jack were often hungry and unkempt, that Savannah was often left in charge of her siblings' care and that their home was filthy and had no electricity or running water. The following day, Z.B. was arrested after she arrived in an intoxicated state to pick up Jack at the end of the school day. The Agency filed a section 300 petition on behalf of Savannah, Julia, Jack and eight-month-old Jamie, and the court removed the four children from Z.B.'s custody and placed them with their maternal aunt.

Z.B. initially denied having an alcohol abuse problem and had difficulty maintaining her sobriety until early 2010, when she began to participate in a residential treatment program and dependency drug court. After giving birth to her fourth daughter, Cassidy, in July 2010, Z.B. experienced certain additional set-backs (including a substantiated referral for general neglect relating to Cassidy in November 2010), but subsequently made substantial progress with her case plan.

By January 2011, Jamie was returned to Z.B. on a 60-day trial basis and Jack began having weekend overnight visits with Z.B. Within a few months, Jamie was returned to Z.B.'s custody and the Agency was planning to return Jack to her custody as well.

In April 2011, Z.B. took Julia, Jack, Jamie and Cassidy to visit her brother, Eric, at his home in Orange County. Z.B.'s brother Dustin was living with Eric at the time, having been recently released from prison. Dustin was subject to a restraining order that prevented him from coming into contact with Z.B., Savannah, Julia and Jack as a result of a prior incident of domestic violence between him and Z.B. Z.B. left the four children (including Cassidy, who was nine months old) alone in the car for nearly an hour. During

that time, Dustin came out of the house and pulled Jack from the car, throwing him into the air a couple of times; Jack later told Z.B. about the incident and she responded that he should not tell anyone about it. When confronted by the social worker about the incident, Z.B. initially denied leaving the children alone "for more than a few seconds," but later asserted (apparently falsely) that their maternal grandmother was in the car with them; she also indicated that although she knew Dustin was living with Eric, she had not expected him to be there at the time of the visit.

In July 2011, Savannah disclosed that she had been molested by Eric on numerous occasions between 2005 and 2008, when the family was living with him.³ After the disclosure, the Agency's plan to grant Z.B. trial custody of Jack was put on hold for a period of time, although Jack was ultimately returned to her care in September 2011.

Based on Z.B.'s successful reunification with Jack and Jamie, the dependency proceedings relating to them were dismissed in March 2012. (All further relevant dates are in 2012 except as otherwise noted.) Although Z.B. knew that any relapse to alcohol on her part would likely result in the children's permanent removal, she had already reduced her AA meeting attendance to once a week and the Agency had begun getting reports that Jack and Jamie were again coming to school dirty and unkempt and that Jack had stopped turning in his homework or making academic progress, despite calls by school staff to Z.B. about the problem.

³ Savannah's allegations were later substantiated and Eric was arrested and convicted in connection with the molests.

In April, the juvenile court terminated Z.B.'s parental rights to Savannah and Julia based on the failure of reunification efforts and placed the girls for adoption. Less than two weeks later, Z.B. was found passed out in her car (with Jamie and Cassidy as passengers) as she waited to pick up Jack from school; school staff had a difficult time waking her and reported that she and her car smelled of alcohol. Jamie and Cassidy were dirty; the car was filthy and contained trash. The police did not arrest Z.B., but would not let her drive, so the school principal transported the family home.

In an interview with social workers the next day, Z.B. initially denied that she had had anything to drink in the preceding two and one-half years and said that her blood pressure medication had caused her to become drowsy. When confronted with reports from school staff that she had smelled of alcohol, Z.B. claimed that she had had one drink (a "beer with tomato juice") in the morning, but then worked in her backyard all day before going to the school. Asked how she would fare if tested for alcohol right then, Z.B. admitted that she might test positive.

Jack told the social worker that his mother kept beverages that were off-limits to him and when she drank those beverages, she would become tired, angry and sick. He also indicated that, when his mother was not feeling well, he had to be the caregiver for his younger sisters.

Based on the recent school incident and a report that Z.B. had driven Jack, Jamie and Cassidy to a restaurant while under the influence on a prior occasion, the Agency filed new section 300 petitions on behalf of those children and placed them in foster care. Shortly after the children were detained, Z.B. requested voluntary services, enrolled in an

outpatient program at Family Recovery Center, started a host of classes and drug testing and began regular visitation with the children.

As a result of Z.B.'s substance abuse history, the termination of her parental rights to Savannah and Julia and her demonstrated inability to remain clean and sober absent court and Agency supervision, the Agency recommended that the juvenile court deny her reunification services.⁴ Jack and Jamie's counsel joined in the Agency's requests.

At the contested jurisdictional and dispositional hearing, Z.B. opposed the Agency's recommendations, arguing that her prompt participation in voluntary services established the absence of a risk of harm and that either (a) the petition should be dismissed or (b) Jack and Jamie should be returned to her care and the court should order reunification services for her. The court made jurisdictional and dispositional findings, removed Jack and Jamie from Z.B.'s care and denied her reunification services. Z.B. challenges the resulting judgments.

DISCUSSION

1. *Jurisdictional Findings*

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction where a child has suffered, or where there is a substantial risk that the child will suffer serious physical harm or illness as a result of the parent's substance abuse and the resulting inability to provide regular care for the child. This statute protects not only children who are currently being abused or neglected, but also "the safety, protection, and physical and

⁴ It recommended that the court provide reunification services to the children's fathers, however.

emotional well-being of children who are at risk of [such] harm." (§ 300.2; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196 [recognizing that a court need not wait until a child is seriously abused or injured to assume jurisdiction].) Moreover, the legislative scheme recognizes that a child's well-being depends on a "home environment free from the negative effects of substance abuse" (§ 300.2; *In re Heather A., supra*, 52 Cal.App.4th at pp. 194-196.)

In the juvenile court, the Agency bears the burden of establishing harm or a substantial risk of harm by a preponderance of the evidence. (§ 355, subd. (a); *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) On appeal, we review a challenge to a juvenile court's exercise of jurisdiction over a child to determine whether its findings are supported by substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The parent has the burden to establish the lack of sufficient evidence. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Z.B. has not met that burden here.

Historical events, including a parent's past conduct, are relevant to the determination of whether a child presently needs the juvenile court's protection. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169 [recognizing that a parent's past conduct is a good predictor of future behavior].) In this case, the evidence of Z.B.'s inability to maintain her sobriety without intervention by the Agency and the court is essentially uncontroverted. Further, the fact that she was found passed out in her car, with her youngest two children present,

amply establishes a risk of harm and thus supports the juvenile court's jurisdictional findings.

Z.B. argues that her relapse was understandable as a result of the termination of her parental rights as to Savannah and Julia and that she immediately responded to the relapse by undertaking voluntary services, apparently as a basis for contending that the risk of harm to Jack and Jamie was insubstantial. However, Z.B. did not seek out services to address her relapse until after the removal of her children yet again. Further, even after the current proceedings were pending, Z.B. took Jack, Jamie and Cassidy to the home where she knew Dustin was living and left them unattended in a vehicle outside the home, notwithstanding the existence of a protective restraining order against Dustin that was intended to protect them. Based on this evidence, the juvenile court could reasonably conclude that there was a substantial risk of harm to Jack and Jamie.

2. *Dispositional Findings/Removal of Custody*

The juvenile court may remove a child from her parent's physical custody if there is "a substantial danger to the [child's] physical health, safety, protection, or physical or emotional well-being" and there are no other reasonable means of protecting the child's physical health. (§ 361, subd. (c)(1); Cal. Rules of Court, rule 5.695(d)(1).) Existing actual harm is not required; rather, the focus of the removal statute "is on averting harm to the child." (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1136.)

In determining whether a substantial danger exists, the court may consider a parent's past conduct and current situation and must assess whether she has progressed sufficiently to eliminate the risk of harm. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461;

cf. *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1221.) In the juvenile court, the Agency has the burden of showing, by clear and convincing evidence, that removal is necessary to protect the child; in proceedings in this court, the parent bears the burden of showing that there is no substantial evidence to support the juvenile court's removal order. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1135; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Again, the evidence supports the juvenile court's findings that removal was necessary to protect Jack and Jamie from substantial danger. Z.B.'s alcohol abuse adversely impacted her ability to properly care for her children over the course of many years and, despite having had several opportunities to benefit from treatment, she was unable to mitigate the risks to them from such abuse. (See § 300.2 [recognizing that a child's well-being depends on the existence of a home environment that is "free from the negative effects of substance abuse"].) The fact that Z.B.'s history was not limited to merely being under the influence of alcohol, but also driving under the influence with her children in the car, permitted the court to conclude that she failed to appreciate the danger of her conduct, to the children and herself, and that she would continue to engage in similar behavior in the future. The evidence of the incident in which Z.B. took the children to Eric's home similarly supports an inference that she was either unaware or unconcerned about the need to provide for her children's safety and protection. This evidence is sufficient to support the court's order removing Jack and Jamie from Z.B.'s custody.

3. *Denial of Reunification Services*

Once a child is removed from parental custody, the juvenile court must, except as provided in section 361.5, subdivision (b), order the Agency to provide services to the parent to facilitate family reunification. (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 59.) There are, however, statutory exceptions to the requirement of reunification services, reflecting a legislative acknowledgement that providing reunification services in certain circumstances may be fruitless. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.)

As relevant here, section 361.5, subdivision (b), provides:

"Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶]

"(10) That the court ordered termination of reunification services for any siblings . . . of the child because the parent or guardian failed to reunify with the sibling . . . after . . . [removal] from that parent or guardian . . . and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling

"(11) That the parental rights of a parent over any sibling . . . of the child had been permanently severed, . . . and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling [¶] . . . [¶]

"(13) That [a] parent . . . has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention"

Z.B. contends that there was insufficient evidence to support the juvenile court's denial of reunification services to her under section 361.5, subdivision (b)(10), (11) or (13). We disagree.

It is undisputed that the juvenile court terminated reunification services for Z.B. in the dependency proceedings relating to Savannah and Julia and later terminated her parental rights to them. Further, as discussed above, Z.B. was unable to integrate the tools taught in her numerous treatment programs to get control of her alcohol abuse problem, including the programs in which she participated in 2010 and 2011. Based on this past lack of success, the juvenile court could have reasonably concluded that Z.B.'s enrollment in additional treatment programs, only after dependency proceedings were again initiated on the children's behalf, did not constitute a reasonable effort to treat her alcohol abuse problems. (See *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73 [recognizing that where a parent has had many opportunities to gain control of his or her alcohol abuse problem, but has been unable to do so, it is not appropriate to sacrifice his or her children's futures merely to give him or her another chance to try to get and stay sober].)

Termination of reunification services is equally proper under section 361.5, subdivision (b)(13) based on Z.B.'s continued abuse of alcohol after participating in court-ordered treatment programs. (§ 361.5, subd. (b)(13); *Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.) Where a parent has demonstrated an inability to use skills and behaviors taught in treatment to maintain a sober life, the juvenile court may

properly conclude that the provision of reunification services would be ineffective to protect his or her child. (*Ibid.*) Such is the case here.

Z.B. nonetheless contends that the juvenile court abused its discretion in denying reunification services for her because she established, by clear and convincing evidence, that offering services to her was in Jack and Jamie's best interests. (See § 361.5, subd. (c) [authorizing the juvenile court to order services, despite the applicability of a section 361.5, subd. (b) bypass provision, if it finds by clear and convincing evidence that providing services would be in the children's best interests].) Although the concept of a child's best interest " 'is an elusive guideline that belies rigid definition,' " the factors to be considered in determining the child's best interests center on the underlying purpose of the statutory scheme " 'to maximize a child's opportunity to develop into a stable, well-adjusted adult.' " (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66, quoting *Adoption of Michelle T.* (1975) 44 Cal.App.3d 699, 704.)

Thus, the issue of whether the provision of reunification services is in a child's best interests turns on a number of factors, including the parent's current efforts and fitness, as well as his or her history, the gravity of the problem that led to the dependency, the degree to which the problem may be easily removed and the degree to which it actually has been removed. (See *Renee J. v. Superior Court*, *supra*, 26 Cal.4th at p. 750; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) The paramount concern underlying a child's best interests, however, is the child's need for stability and continuity. (See *In re Christina A.* (1989) 213 Cal.App.3d 1073, 1079-1080.) We review the juvenile court's decision about whether offering reunification services to a parent would be in the child's

best interests for an abuse of discretion. (§ 361.5, subd. (c); *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96, fn. 6.) We find no such abuse here.

As Z.B. points out, her current efforts to regain sobriety have been commendable; however, as recounted above, she has a significant history of alcohol abuse and has been consistently unsuccessful in maintaining sobriety absent court and Agency supervision. In addition, evidence in the record shows that Z.B. has a tendency to minimize or deny the existence of her substance abuse problem and the adverse impact that that problem has upon her children's needs for stability, continuity and protection. Under these circumstances, the juvenile court did not abuse its discretion in concluding that Z.B. had not established that, at the time of the contested hearing, providing her with reunification services was in Jack and Jamie's best interests. (See *Randi R. v. Superior Court, supra*, 64 Cal.App.4th at p. 73.)

DISPOSITION

The judgments are affirmed.

McCONNELL, P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.